

Introduced by Senator Knight

January 29, 2014

An act to amend Sections 264 and 264.1 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 922, as introduced, Knight. Sex offenses: disabled victims.

Under existing law, a person who commits rape against a person incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, where that fact is known or reasonably should be known by the person committing the act, shall be punished by imprisonment in the state prison for 3, 6, or 8 years. Under existing law, a person who commits that crime voluntarily acting in concert with another person, by force or violence and against the will of the victim, shall be punished by imprisonment in the state prison for 5, 7, or 9 years.

This bill would instead make these crimes punishable by imprisonment in the state prison for 9, 11, or 13 years, and 10, 12, or 14 years, respectively.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 264 of the Penal Code is amended to
- 2 read:
- 3 264. (a) Except as provided in subdivision (c), rape, as defined
- 4 in Section 261 or 262, is punishable by imprisonment in the state
- 5 prison for three, six, or eight years.

(b) In addition to any punishment imposed under this section the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates Section 261 or 262 with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine ~~permitted~~ *authorized* under this subdivision.

(c) (1) Any person who commits rape in violation of paragraph (2) of subdivision (a) of Section 261 upon a child who is under 14 years of age shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(2) Any person who commits rape in violation of paragraph (2) of subdivision (a) of Section 261 upon a minor who is 14 years of age or older shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(3) Any person who commits rape in violation of paragraph (1) of subdivision (a) of Section 261 shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

~~(3)~~

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

SEC. 2. Section 264.1 of the Penal Code is amended to read:

264.1. (a) The provisions of Section 264 notwithstanding, in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, the defendant shall suffer confinement in the state prison for five, seven, or nine years.

(b) (1) If the victim of an offense described in subdivision (a) is a child who is under 14 years of age, the defendant shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(2) If the victim of an offense described in subdivision (a) is a minor who is 14 years of age or older, the defendant shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

1 (3) *If the victim of an offense described in subdivision (a) is a*
2 *person incapable, because of mental disorder or developmental*
3 *or physical disability, of giving legal consent, and this is known*
4 *or reasonably should be known to the person committing the act,*
5 *the defendant shall be punished by imprisonment in the state prison*
6 *for 10, 12, or 14 years.*

7 ~~(3)~~

8 (4) This subdivision does not preclude prosecution under Section
9 269, Section 288.7, or any other provision of law.